

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/GB2004/004801

International filing date (day/month/year)
12.11.2004

Priority date (day/month/year)
13.11.2003

International Patent Classification (IPC) or both national classification and IPC
B65D5/02

Applicant
CADBURY SCHWEPPE PLC

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 38,59

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the whole application or for said claims Nos. 38,59
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- ☐ See separate sheet for further details

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	4,13,24,28-37,50,57
	No: Claims	1-3,5-12,14-23,25-27,39-49,51-56,58
Inventive step (IS)	Yes: Claims	
	No: Claims	1-37,39-58
Industrial applicability (IA)	Yes: Claims	1-37,39-58
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Reference is made to the following documents :

- D1: US-A-4 159 076 (ENGDAHL, ARNOLD B JR) 26 June 1979 (1979-06-26)
- D2: US-A-3 094 265 (HOVLAND HOWARD N) 18 June 1963 (1963-06-18)
- D3: FR-A-1 031 851 (HERMIER GONZAGUE) 26 June 1953 (1953-06-26)
- D4: EP-A1-0 814 025 (WADDINGTON IMCA B.V; M.Y. CARTONS B.V) 29 December 1997 (1997-12-29)
- D5: DE 791 38 03U U1 (GRAPHIA HANS GUNDLACH GMBH, 4800 BIELEFELD) 30 August 1979 (1979-08-30)

Claim 1

The document discloses (see in particular Fig. 6 and 7) a carton blank including all features of the present claim 1.

In particular, D1 discloses

- a number of main panels (26, 28, 30, 32) separated by longitudinal folds;
- end panels (50, 52) for forming end walls foldably connected to a first pair of main panels;
- end flaps (46, 48) foldably connected to a second pair of main panels;
- an end tab (54) foldably connected to a first end panel (50) adapted for fixation to a side wall or to the corresponding second end panel (see Fig. 6).

Accordingly, the present claim 1 does, because of lack of novelty, not meet the requirements of Article 33 (2) PCT.

The documents D2 (see Fig. 8) and D3 (see Fig. 3) also disclose a carton blank including all features of the present claim 1. In this context, it has to be noted that D3 does not explicitly mention that the flap (10) should be fixed to the panel (3). This is, however, clearly possible.

Dependent claims

Most of the dependent claims indicate features or actions which are necessarily performed when folding the claimed blank into a carton. All these features are, of course, also known from the document D1.

This is not the case for the following features :

Fixation of the end tab to a side wall (claims 4 and 57): It is believed that, in view of the teaching of the document D1, this is an obvious alternative for the skilled man when fixing the first end panel to the preformed tubular carton structure.

Use of a plastics material instead of paperboard (claim 13) : This use is considered obvious for the skilled man.

Folding of the end flaps over the second end wall (claim 50) : This is a question of the outer appearance of the finished package and is, therefore, considered as a design option chosen by the skilled man in an obvious manner.

Provision of a curved structure of the carton walls (claims 24 and 28 to 33) :
Notwithstanding the fact that such a structure is also basically considered as a design option, the features necessary to obtain such a structure are clearly depicted in the document D4 (see Fig. 1 and 2).

Provision of a transverse tear strip (claims 34 to 37) : Such tear strips are undoubtedly commonly known to the skilled man. Nevertheless, reference is made to the document D5, clearly disclosing a transverse tear strip which would also be applicable in a carton according to D1.

Accordingly, it appears that the combination of one or more of the dependent claims with the present claim 1 would, because of lack of an inventive step, not result in an independent claim meeting the requirements of Article 33 (3) PCT.